



July 13, 1999

Mr. Paul C. Sarahan
Director
Litigation Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-1944

Dear Mr. Sarahan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125978.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information relating to Advanced Aromatics. You state that the commission has released some of the requested information. However, you claim that the documents submitted as Attachment C are excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

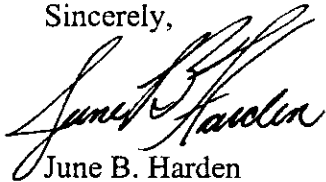
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-

judicial proceeding. Open Records Decision No. 551 (1990). A contested case under the Administrative Procedure Act (the "APA") is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991).

You state that there is an administrative action pending against Advanced Aromatics. You further explain that if Advanced Aromatics does not enter into an agreed order within a certain amount of time, this case will be resolved through a contested case enforcement hearing or a trial. We have reviewed the documents at issue and conclude that they are related to the anticipated enforcement action. Therefore, the commission may withhold these documents under section 552.103(a). We note, however, that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we are able to make a determination under section 552.103, we need not address your additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 125978

Encl. Submitted documents

cc: Ms. Kelly Brown
Crain, Caton & James
909 Fannin Street, 33rd Floor
Houston, Texas 77010-1079
(w/o enclosures)